

JUL 10 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

CIRCUIT CITY, INC.,

Plaintiff - Appellant,

v.

JOANNE MICHELLE MCLEMORE,

Defendant - Appellee.

No. 02-15058

D.C. No. CV-01-03309-SBA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Argued and Submitted June 9, 2003
San Francisco, California

Before: HILL, ** T.G. NELSON, and HAWKINS, Circuit Judges.

The Rooker-Feldman doctrine does not bar the district court from taking jurisdiction. The California Court of Appeal did not make a judgment on the merits,

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Honorable James C. Hill, Senior United States Circuit Judge for the Eleventh Circuit Court of Appeals, sitting by designation.

but instead found that the Superior Court had failed to consider whether an agreement existed between the parties and, if so, whether it was enforceable under California law. The matter was remanded to the Superior Court for an evidentiary hearing. Because the California courts have not conclusively ruled on the enforceability of the arbitration agreement, the district court would not have been required to directly review or adjudicate claims “inextricably intertwined” with a final judgment of a state court. See G.C. and K.B. Inv., Inc. v. Wilson, 326 F.3d 1096, 1103 (9th Cir. 2003).

We instead determine that this case falls within the narrow confines of the Colorado River doctrine, which permits the stay of a federal suit pending the outcome of state proceedings when considerations of “wise judicial administration” so demand. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 818 (1976). The eight factors considered under Colorado River are: (1) which court first assumed jurisdiction over the property involved in the suit; (2) convenience of the federal forum; (3) the avoidance of piecemeal litigation; (4) the order in which jurisdiction was obtained; (5) whether “federal law provides the rule of decision on the merits;” (6) whether the state court proceedings are adequate to protect the federal litigant’s rights; (7) the prevention of forum shopping; and (8) whether the two actions are substantially similar. See Travelers Indem. Co. v. Madonna, 914 F.2d 1364, 1367-68 (9th Cir. 1990).

The first factor is inapplicable, the second factor favors continuation of the federal proceedings and the remaining six factors weigh in favor of a stay. As such, we determine that application of the Colorado River doctrine is appropriate.

The district court's order dismissing is VACATED. The case is REMANDED with instructions to stay the federal action pending the outcome of the state proceedings.